

IN THE SENATE

SENATE BILL NO. 1411

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO GARNISHMENTS; AMENDING SECTION 8-507, IDAHO CODE, TO PROVIDE THAT A SERVING ATTORNEY SHALL SERVE CERTAIN DOCUMENTS, TO DEFINE A TERM AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 8-507A, IDAHO CODE, TO REVISE PROVISIONS RELATING TO SERVICE ON A DEFENDANT OR CERTAIN THIRD PARTIES BY THE SHERIFF OR A SERVING ATTORNEY; AMENDING SECTION 8-507B, IDAHO CODE, TO REVISE PROVISIONS RELATING TO SERVICE ON A DEFENDANT OR CERTAIN THIRD PARTIES BY A BANK OR DEPOSITORY INSTITUTION; AMENDING SECTION 8-507C, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE AVAILABILITY OF CERTAIN FORMS AND TO REVISE A CERTAIN NOTICE FORM; AMENDING SECTION 8-507D, IDAHO CODE, TO PROVIDE THAT A SERVING ATTORNEY HAS CERTAIN DUTIES; AMENDING SECTION 8-508, IDAHO CODE, TO REVISE PROVISIONS RELATING TO LIABILITY OF A GARNISHEE; AMENDING SECTION 8-509, IDAHO CODE, TO REVISE PROVISIONS RELATING TO AN EXAMINATION OF A GARNISHEE; AMENDING SECTION 8-510, IDAHO CODE, TO REVISE PROVISIONS RELATING TO DISCHARGE OF A GARNISHEE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 8-521, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE LIABILITY OF CERTAIN PERSONS; AMENDING SECTION 8-524, IDAHO CODE, TO REQUIRE A SERVING ATTORNEY TO MAKE A FULL INVENTORY OF CERTAIN PROPERTY; AMENDING SECTION 11-102, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE FORM OF A CERTAIN WRIT; AMENDING SECTION 11-103, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE TIME WHEN AN EXECUTION IS RETURNABLE AND TO REVISE PROVISIONS RELATING TO CONTINUOUS EXECUTION OR GARNISHMENT FOR CHILD SUPPORT; AMENDING SECTION 11-107, IDAHO CODE, TO PROVIDE THAT WHERE AN EXECUTION IS AGAINST THE PROPERTY OF THE JUDGMENT DEBTOR IT MAY BE ISSUED TO A SERVING ATTORNEY AND TO PROVIDE THAT WHERE AN EXECUTION IS FOR CERTAIN GARNISHMENTS IT MAY BE ISSUED TO A SERVING ATTORNEY; AMENDING SECTION 11-203, IDAHO CODE, TO REVISE PROVISIONS RELATING TO A CLAIM OF EXEMPTION BY DEFENDANT OR THIRD PARTY CLAIM AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 11-206, IDAHO CODE, TO DEFINE A TERM AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 11-301, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE EXECUTION OF A CERTAIN WRIT AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING CHAPTER 32, TITLE 31, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 31-3203A, IDAHO CODE, TO PROVIDE THAT A SERVING ATTORNEY MAY CHARGE A REASONABLE FEE AND MAY CHARGE A CERTAIN COMMISSION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 8-507, Idaho Code, be, and the same is hereby amended to read as follows:

8-507. GARNISHMENT -- SERVICE OF WRIT OF ATTACHMENT, EXECUTION, OR GARNISHMENT -- BANKS. (a) Upon receiving written directions from the plaintiff or his attorney, that any person or corporation, public or private, has

1 in his or its possession or control, any credits or other personal property  
 2 belonging to the defendant, or is owing any debt to the defendant, the sher-  
 3 iff or a serving attorney shall serve upon any such person, or corporation  
 4 identified in the plaintiff's written directions all of the following docu-  
 5 ments:

- 6 (1) a A copy of the writ;
- 7 (2) a A notice that such credits, or other property, or debts, as the  
 8 case may be, are attached in pursuance of such writ;
- 9 (3) a A notice of exemptions available under federal and state law;
- 10 (4) ~~Instructions~~ instructions to debtors and third parties for asserting a claim of  
 11 exemption;
- 12 (5) a A form for making a claim of exemption; and
- 13 (6) ~~If~~ If the garnishee is a bank or depository institution, a search fee  
 14 of five dollars (\$5.00) and the last known mailing address of the defen-  
 15 dant and, if known, a tax identification number, that will enable the  
 16 garnishee to identify the defendant on its records.

17 The documents specified in paragraphs (3) through (5) of this subsec-  
 18 tion shall be in a form substantially similar to the form provided in section  
 19 8-507C, Idaho Code.

20 (b) In case of service upon a corporation including, but not limited to,  
 21 any banking or trust corporation, the same may be had by delivering a copy of  
 22 the papers to be served, if upon a private corporation, to any officer, man-  
 23 ager or designated agent thereof, and if upon a public or municipal corpora-  
 24 tion, to the mayor, president of the council or board of trustees, or any pre-  
 25 siding officer, or to the secretary or clerk thereof.

26 In the event a banking or trust corporation operates more than one (1)  
 27 office where deposits are received within the state of Idaho, the banking or  
 28 trust corporation may, by notifying the Idaho department of finance, desig-  
 29 nate a particular office for the service of attachment, execution and gar-  
 30 nishment papers. Such office may be located either within or outside the  
 31 state of Idaho. The Idaho department of finance shall post the list of such  
 32 designated offices on its web page for access by the public.

33 If a banking or trust corporation operating more than one (1) office  
 34 where deposits are received has designated a particular office for the at-  
 35 tachment, execution, or garnishment, then service of such papers made on  
 36 the office so designated shall be valid and effective as to moneys to the  
 37 defendant's credit held in the possession or control of any of the banking or  
 38 trust corporation's branches or offices located within or outside the state  
 39 of Idaho.

40 If service of the attachment, execution or garnishment papers is not  
 41 made on the designated office of the banking or trust corporation, but in-  
 42 stead is made on another office of the banking or trust corporation located  
 43 in the state of Idaho, then service of such papers shall be valid and effec-  
 44 tive as to moneys to the defendant's credit in that particular office and as  
 45 to other personal property belonging to the defendant held in the possession  
 46 or control of that particular office, but shall only become valid and effec-  
 47 tive as to moneys to the defendant's credit held in the possession or control  
 48 of any of the bank or trust corporation's other offices upon receipt of the  
 49 attachment, execution or garnishment papers by the designated office. Such  
 50 banking or trust corporation may, but is under no obligation to, transmit

1 the original or a copy of the papers from the particular office served to the  
2 designated office.

3 Service on any banking or trust corporation is effective as against the  
4 moneys and other personal property to the defendant's credit which are in the  
5 possession or control of the banking or trust corporation named in the gar-  
6 nishment, but not any affiliate, parent or subsidiary not named. If the gar-  
7 nishment fails to sufficiently distinguish the banking or trust corporation  
8 from any affiliate, parent or subsidiary thereof, such that it is not clear  
9 which entity is intended to be the garnishee, the garnishment may be returned  
10 unsatisfied.

11 (c) The provisions of this section and sections 8-507A through 8-507D,  
12 Idaho Code, shall apply to any levy by execution pursuant to chapters 2 and 3,  
13 title 11, Idaho Code.

14 (d) For the purposes of chapter 5, title 8, and chapters 1 through 3,  
15 title 11, Idaho Code, "serving attorney" means an attorney who is an active  
16 member of the Idaho state bar and his or her duly authorized employee or agent  
17 over whom the attorney has direct supervision.

18 SECTION 2. That Section 8-507A, Idaho Code, be, and the same is hereby  
19 amended to read as follows:

20 8-507A. SERVICE ON DEFENDANT AND THIRD PARTIES BY SHERIFF OR SERVING  
21 ATTORNEY. Within two (2) business days after service of the writ and other  
22 documents as provided in section 8-507, Idaho Code, or if service is upon a  
23 bank or other depository institution, within one (1) business day, the sher-  
24 iff or serving attorney shall hand deliver or mail to the defendant and any  
25 third party named in plaintiff's written directions as a co-owner or hav-  
26 ing an interest in the property or money to be levied upon, one (1) copy of  
27 all the documents and if the garnishee is a bank or depository institution,  
28 the search fee and other information specified in subsection (a) of section  
29 8-507, Idaho Code. The plaintiff shall identify in the plaintiff's writ-  
30 ten directions the last known mailing address of the defendant and any third  
31 party to be served. The sheriff or serving attorney shall indicate on the re-  
32 turn of the writ filed with the court the date and manner of service upon the  
33 defendant and any third party and shall indicate the documents served.

34 If at the time of service of the writ the sheriff or serving attorney  
35 receives written answer from the garnishee stating that it has no money or  
36 other personal property belonging or owing to the defendant, compliance with  
37 the provisions of this section shall not be required.

38 SECTION 3. That Section 8-507B, Idaho Code, be, and the same is hereby  
39 amended to read as follows:

40 8-507B. SERVICE ON DEFENDANT AND THIRD PARTIES BY BANK OR DEPOSITORY  
41 INSTITUTION. If the writ and notice of garnishment are served upon a bank or  
42 other depository institution holding money or accounts belonging to the de-  
43 fendant, the garnishee shall within one (1) business day after such service,  
44 mail or hand deliver a copy of all documents served upon it by the sheriff or  
45 serving attorney:

46 (a) To the defendant at the address to which account statements or other  
47 pertinent account documentation are normally sent, or if the money is not in

1 an account, to the last known address of the defendant shown upon the records  
2 of the garnishee at the time of service upon it of the writ; and

3 (b) To any other person shown upon the records of the garnishee as a  
4 co-owner or having an interest in the money or accounts garnished at the last  
5 known address of the third party shown upon the records of the garnishee at  
6 the time of service upon it of the writ.

7 The bank or depository institution shall be entitled to deduct a single  
8 fee of not to exceed ten dollars (\$10.00) from the money transferred to the  
9 sheriff or serving attorney pursuant to the garnishment to cover the costs  
10 associated with the processing and service of the documents. The fee herein  
11 provided shall be the only processing and service fee to which the bank or  
12 depository institution is entitled regardless of the number of parties to  
13 which documents are sent and is in addition to the search fee specified in  
14 subsection (a) (6) of section 8-507, Idaho Code. Upon being notified by the  
15 sheriff or serving attorney that money transferred pursuant to the garnish-  
16 ment has been released as a result of a court determination that the money is  
17 exempt or a failure by the plaintiff to contest the claim of exemption, the  
18 garnishee shall recredit the fee to the defendant's account or reimburse the  
19 defendant therefor and the plaintiff shall reimburse the garnishee for the  
20 fee.

21 The garnishee shall indicate in the answer to interrogatories as pro-  
22 vided in section 8-511, Idaho Code, the date and manner of service of the doc-  
23 uments upon the defendant and any third party as herein required but shall  
24 not be required to disclose the names or addresses of any third party served.

25 The garnishee shall only be required to serve on the defendant and any  
26 third party copies of those documents served upon it by the sheriff or serv-  
27 ing attorney.

28 SECTION 4. That Section 8-507C, Idaho Code, be, and the same is hereby  
29 amended to read as follows:

30 8-507C. FORMS. The notice of exemptions, instructions to debtors and  
31 third parties, and the claim of exemption shall be in a form substantially  
32 similar to the form hereinafter provided. The forms shall be made available  
33 in English and Spanish language translations in the offices of each county  
34 sheriff and of each attorney who serves or processes garnishments. Notice,  
35 written in Spanish, of the availability of these documents in Spanish trans-  
36 lation shall be set forth on the notice of exemptions.

#### 37 IMPORTANT LEGAL NOTICE/NOTICIA LEGAL IMPORTANTE

38 MONEY/PERSONAL PROPERTY BELONGING TO YOU MAY HAVE BEEN TAKEN OR  
39 HELD IN ORDER TO SATISFY A COURT JUDGMENT. YOU MAY BE ABLE TO GET  
40 YOUR MONEY/PROPERTY BACK SO READ THIS NOTICE CAREFULLY.

41 SI SOLAMENTE HABLA ESPANOL PUEDE OBTENER UNA FORMA EN ESPANOL EN EL  
42 DEPARTAMENTO DEL SHERIFE O EN LA OFICINA DEL ABOGADO.

43 ONLY ONE ORDER OF GARNISHMENT AGAINST EARNINGS MAY BE IN EFFECT  
44 AGAINST A JUDGMENT DEBTOR AT ANY GIVEN TIME. IF THERE IS AN ORDER  
45 OF GARNISHMENT CURRENTLY IN EFFECT, THE EMPLOYER MUST RETURN THE

ENCLOSED ORDER OF GARNISHMENT TO THE SHERIFF OR SERVING ATTORNEY,  
 NOTIFYING THE SHERIFF OR SERVING ATTORNEY THAT THERE IS CURRENTLY  
 A GARNISHMENT IN EFFECT. UPON RETURNING THE ENCLOSED ORDER, THE  
 EMPLOYER MUST IDENTIFY THE FOLLOWING:

1. THE COUNTY ISSUING THE GARNISHMENT THAT IS IN PLACE;
2. THE COURT ISSUING THE GARNISHMENT THAT IS IN PLACE;
3. THE COURT CASE NUMBER THAT CORRESPONDS WITH THE GARNISH-  
MENT THAT IS IN PLACE;
4. THE BALANCE REMAINING ON THE GARNISHMENT THAT IS IN PLACE;  
AND
5. THE ESTIMATED DATE THAT THE GARNISHMENT WILL BE SATISFIED.

The enclosed writ of execution and/or notice of garnishment has directed the  
 sheriff or serving attorney to take custody by levying on your money and/or  
 personal property in order to satisfy a court judgment.

The sheriff or serving attorney has levied on your money and/or personal  
 property. You have FOURTEEN (14) DAYS after the date of mailing or personal  
 service of these documents to file a claim of exemption with the ~~sheriff~~  
party who served you with these documents. An exemption from levy entitles  
 you to obtain the release of your money and personal property.

The following is a partial list of money and personal property that may be ex-  
 empt from levy. EXEMPTIONS ARE PROVIDED BY IDAHO AND FEDERAL LAW AND CAN BE  
 FOUND IN THE IDAHO CODE AND IN THE UNITED STATES CODE. MOST OF THE EXEMPTIONS  
 PROVIDED BY THE STATE ARE CONTAINED IN CHAPTER 6, TITLE 11, IDAHO CODE. GOV-  
 ERNMENTAL BENEFITS SUCH AS SOCIAL SECURITY, SSI, VETERANS, RAILROAD RETIRE-  
 MENT, MILITARY, AND WELFARE ARE EXEMPT FROM LEVY IN MOST CASES UNDER FEDERAL  
 LAW.

This list may not be complete and may not include all exemptions that apply  
 in your case because of periodic changes in the law. Additionally, some of  
 the exemptions may not apply in full or under all circumstances. There may be  
 special requirements for child support. You or your attorney should read the  
 exemption statutes which apply to you.

If you believe the money or personal property that ~~are~~ is being levied upon is  
 exempt, you should immediately file a claim of exemption. If you fail to make  
 a timely claim of exemption, the sheriff or serving attorney will release  
 money to the plaintiff, or the property may be sold at an execution sale, per-  
 haps at a price substantially below its value, and you may have to bring fur-  
 ther court action to recover the money and property.

The sheriff and the serving attorney cannot give you legal advice. There-  
 fore, if you have any questions concerning your rights in this action, you  
 should consult an attorney as soon as possible. You may contact the nearest  
 office of Idaho legal aid services, inc. to inquire if you are eligible for  
 their assistance.

SOME EXEMPTIONS TO WHICH YOU MAY BE ENTITLED

1 Type of Money and Property

- 2 1. Alimony, support, maintenance (money or property)
- 3 2. Appliances (household) (\$500 per item, up to \$5,000 gross)
- 4 3. Annuity contract payments
- 5 4. Bodily injury and wrongful death awards\*
- 6 5. Books (professional) up to \$1,500
- 7 6. Burial plots
- 8 7. Child support payments\*
- 9 8. Disability or illness benefits\*
- 10 9. Furnishings (household) (\$500 per item, up to \$5,000 gross)
- 11 10. Health aids
- 12 11. Homestead, house, mobile home, and related structures
- 13 12. Jewelry (up to \$1,000)
- 14 13. Life insurance benefits payable to spouse or dependent\*
- 15 14. Medical and/or hospital benefits
- 16 15. Military retirement and survivor's benefits
- 17 16. Motor vehicle: car, truck, motorcycle with a value of up to \$3,000
- 18 per person
- 19 17. Pension: stock bonus, profit sharing annuity, or similar plans
- 20 18. Personal property: (\$500 per item, up to \$5,000 gross) (furnish-
- 21 ings, appliances, one firearm, animals, musical instruments, books,
- 22 clothes, family portraits and heirlooms)
- 23 19. Public assistance: federal, state, or local including: Aid to
- 24 Aged, Blind and Disabled (AABD); Aid to Families with Dependent Chil-
- 25 dren (AFDC); Aid to Permanently and Totally Disabled (APTD)
- 26 20. Public Employee's Benefits including Federal Civil Service Retire-
- 27 ment, Idaho Retirement and Disability
- 28 21. Railroad Retirement Benefits
- 29 22. Retirement, pension or profit sharing plan qualified by IRS
- 30 23. Social Security Disability and Retirement Benefits
- 31 24. SSI (Supplemental Security Insurance Benefits)
- 32 25. Tools of trade and implements up to \$1,500
- 33 26. Unemployment benefits
- 34 27. Veterans benefits and insurance
- 35 28. Wages or salary:
- 36 Consumer debts primarily for personal or household purposes: ex-
- 37 emption is 30 times the federal minimum wage or 25% of disposable
- 38 income, whichever is greater
- 39 Nonconsumer debts: exemption is 30 times the federal minimum wage
- 40 or 25% of disposable income, whichever is greater
- 41 29. Worker's compensation
- 42 30. An unmatured life insurance contract other than a credit life in-
- 43 surance contract
- 44 31. An aggregate interest, not to exceed \$5,000, in any accrued divi-
- 45 dend or interest under, or loan value of, an unmatured life insurance
- 46 contract under which the insured is the individual or a person of whom
- 47 the individual is a dependent
- 48 32. An aggregate interest in any tangible personal property, not to ex-
- 49 ceed the value of \$800

- 1     \*     To the extent reasonably necessary for support of family and if not com-  
2     mingled with other funds.

3                   INSTRUCTIONS TO DEFENDANTS AND THIRD PARTIES

4           In order to claim an exemption from execution and garnishment under  
5   Idaho and federal law, you, the defendant, judgment debtor, or a third party,  
6   holding or known to have an interest in the money and/or personal property,  
7   must:

- 8       1.   DELIVER OR MAIL A CLAIM OF EXEMPTION TO THE SHERIFF PARTY WHO  
9           LEVIED UPON YOUR MONEY AND/OR PERSONAL PROPERTY AT     (SHER-  
10          IFF'S OR SERVING ATTORNEY'S STREET ADDRESS)     , WITHIN FOUR-  
11          TEEN (14) DAYS AFTER MAILING OR PERSONAL SERVICE OF THESE IN-  
12          STRUCTIONS, NOTICE OF EXEMPTIONS AND FORM FOR FILING A CLAIM  
13          OF EXEMPTION. IF YOU MAIL A CLAIM OF EXEMPTION, IT MUST BE RE-  
14          CEIVED BY THE SHERIFF OR THE SERVING ATTORNEY WITHIN THE FOUR-  
15          TEEN (14) DAY PERIOD.
- 16       2.   The sheriff or serving attorney has to notify the plaintiff  
17           or judgment creditor within one (1) business day, excluding  
18           weekends and holidays, that you filed a claim of exemption.  
19           The judgment creditor has five (5) business days, excluding  
20           weekends and holidays, after the date notice was provided  
21           that a claim of exemption was filed with the sheriff or serv-  
22           ing attorney, to file a motion with the court contesting the  
23           claim of exemption.
- 24       3.   If the judgment creditor notifies the sheriff or the serving  
25           attorney that he will not object to the claim of exemption or  
26           does not file a motion with the court contesting the claim of  
27           exemption, the sheriff or the serving attorney will immedi-  
28           ately return the money and/or personal property or notify the  
29           bank or depository institution to release the money and/or  
30           personal property which has been levied upon.
- 31       4.   IF THE JUDGMENT CREDITOR DOES FILE A MOTION WITH THE COURT CON-  
32           TESTING THE CLAIM OF EXEMPTION, YOU, THE JUDGMENT DEBTOR OR  
33           ANY INTERESTED THIRD PARTY, WILL RECEIVE A COPY OF THE MOTION  
34           AND NOTICE OF HEARING. A HEARING WILL BE HELD WITHIN NOT LESS  
35           THAN FIVE (5) NOR MORE THAN TWELVE (12) DAYS AFTER THE FIL-  
36           ING DATE OF THE MOTION. YOU SHOULD BE PREPARED TO EXPLAIN THE  
37           GROUNDS FOR CLAIMING THE EXEMPTION IN COURT ON THE DATE AND  
38           TIME SET FOR THE HEARING. YOU SHOULD BRING WHATEVER DOCUMENTS  
39           YOU HAVE TO SUPPORT YOUR CLAIM.
- 40       5.   This is a notice, not legal advice. If you have any questions  
41           concerning your rights in this action, you should contact an  
42           attorney as soon as possible. If you are low income and cannot  
43           afford an attorney you may contact the nearest office of Idaho  
44           Legal Aid Services, Inc. to inquire if they can assist you.

1 IN THE DISTRICT COURT OF THE ..... JUDICIAL DISTRICT OF THE STATE OF  
 2 IDAHO, IN AND FOR THE COUNTY OF .....

3 .....-  
 4 .., )  
 5 Plaintiff(s), ) CASE NO.  
 6 vs. ) CLAIM OF EXEMPTION  
 7 .....-  
 8 .., )  
 9 Defendant(s). )  
 10 .....-  
 11 ... )

12 I claim an exemption from levy for the following described money and/or  
 13 property:

14 a. Money, including money in a bank account, which was paid to me or my  
 15 family as:

16 ..... Public assistance of any kind  
 17 ..... Social security or SSI  
 18 ..... Worker's compensation  
 19 ..... Unemployment benefits  
 20 ..... Child support  
 21 ..... Retirement, pension, or profit sharing benefits  
 22 ..... Military or veterans benefits  
 23 ..... Life insurance or other insurance  
 24 ..... Disability, illness, medical or hospital benefits  
 25 ..... Alimony, support or maintenance  
 26 ..... Annuity contract benefits  
 27 ..... Bodily injury or wrongful death awards  
 28 ..... Other money (describe) .....  
 29 ..... Wages (Do not check this box until you have first talked  
 30 to your employer to see if he correctly calculated your  
 31 exemption according to the formula under item 28 on the form  
 32 entitled "SOME EXEMPTIONS TO WHICH YOU MAY BE ENTITLED."  
 33 Then check this box only if you believe your employer's  
 34 calculation is incorrect.)

35 b. Property:

36 ..... Professional books  
 37 ..... Burial plots



9 .....  
10 Defendant or  
11 Representative

14 8-507D. DOCUMENTS TO BE PROVIDED BY PLAINTIFF -- DUTIES OF SHERIFF OR  
15 SERVING ATTORNEY -- SERVICE AND MAILING CRITERIA -- TIME COMPUTATION. With  
16 respect to any attachment, garnishment or execution, the plaintiff shall  
17 provide the sheriff or serving attorney with sufficient copies of the writ  
18 and other documents required to be served for service on the defendant and  
19 each additional party identified in the plaintiff's written directions and  
20 shall provide an envelope addressed to each person required to be served. If  
21 the documents are to be mailed, proper postage shall be affixed. The sheriff  
22 or serving attorney shall not delay service for lack of sufficient copies  
23 or postage and shall make any additional copies and affix any additional  
24 postage necessary. The sheriff or serving attorney may charge the plaintiff  
25 for the actual costs of any additional copies and postage required, which  
26 costs shall be in addition to the fees permitted under section 31-3203, Idaho  
27 Code.

28 Personal service shall be accomplished in the same manner provided for  
29 service of summons under the Idaho rules of civil procedure. Provided how-  
30 ever, that in the case of garnishments the county sheriff or serving attor-  
31 ney shall have the option of accomplishing personal service by United States  
32 certified mail, return receipt requested, or United States first class mail  
33 with a facsimile acknowledgment of such service by the garnishee. Unless  
34 otherwise provided to the contrary, the date when an item is deposited in the  
35 United States mail shall constitute the date of mailing and the date of ser-  
36 vice shall be the date when the garnishee signs the return receipt for the  
37 certified mail or the date the garnishee sends its facsimile acknowledgment  
38 of service. In computing any period of time within which an act is to be ac-  
39 complished, the day of the act after which the designated period of time be-  
40 gins to run is not to be included. The last day of the period so computed  
41 is to be included, unless it falls on a weekend or legal holiday, in which  
42 event the period runs until the close of business of the first business day  
43 after the weekend or holiday, except that this provision shall not extend the

1 time within which hearing on a motion to contest a claim of exemption or third  
2 party claim must be set as provided in section 8-540, Idaho Code, and section  
3 11-203, Idaho Code.

4 The sheriff or the serving attorney shall not be required to investigate  
5 or assure the accuracy and completeness of the addresses of the parties to be  
6 served or any other information provided by the plaintiff.

7 SECTION 6. That Section 8-508, Idaho Code, be, and the same is hereby  
8 amended to read as follows:

9 8-508. LIABILITY OF GARNISHEE. All persons having in their possession  
10 or under their control, any credits or other personal property belonging to  
11 the defendant, at the time of service upon them of a copy of the writ and no-  
12 tice, as provided in the last two (2) sections, shall be, unless such prop-  
13 erty be delivered up or transferred, or such debts be paid to the sheriff or  
14 to the serving attorney, liable to the plaintiff for the amount of such cred-  
15 its, property, or debts, until the attachment be discharged or any judgment  
16 recovered by him be satisfied.

17 SECTION 7. That Section 8-509, Idaho Code, be, and the same is hereby  
18 amended to read as follows:

19 8-509. EXAMINATION OF GARNISHEE. (a) Any person owing debts to the de-  
20 fendant, or having in his possession or under his control, any credits or  
21 other personal property belonging to the defendant, may be required to at-  
22 tend before the court or judge, or a referee appointed by the court or judge,  
23 and be examined on oath respecting the same. If the garnishee be a corpora-  
24 tion the officer or agent thereof having knowledge of the fact sought to be  
25 established may be required to attend and give evidence thereof. The defen-  
26 dant may also be required to attend for the purpose of giving information re-  
27 specting his property and may be examined on oath. The court or judge may,  
28 after such examination, order personal property capable of manual delivery  
29 to be delivered to the sheriff or to the serving attorney, on such terms as  
30 may be just, having reference to any liens or claims against the same, and a  
31 memorandum to be given of all other personal property, containing the amount  
32 and description thereof.

33 (b) When the garnishee is the employer of the judgment debtor, the judg-  
34 ment creditor, upon application to the court, shall have issued by the clerk  
35 of court, a continuing garnishment directing the employer-garnishee to pay  
36 to the sheriff or to the serving attorney such future moneys coming due to  
37 the judgment debtor as may come due to said judgment debtor as a result of the  
38 judgment debtor's employment. This continuing garnishment shall continue  
39 in force and effect until the judgment is satisfied. The creditor shall be  
40 solely responsible for insuring that the amounts garnished do not exceed the  
41 amount due on the judgment. If additional garnishments are issued during  
42 the term of a continuing garnishment and the continuing garnishment is the  
43 maximum allowed under the provisions of section 11-207, Idaho Code, the ad-  
44 ditional garnishments cannot be served until the continuing garnishment is  
45 satisfied, or until the amount taken by the continuing garnishment is less  
46 than the maximum allowed; additional garnishments issued during the term of  
47 a continuing garnishment must be served in the order in which presented.

1       SECTION 8. That Section 8-510, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3       8-510. NOTICE OF GARNISHMENT -- DISCHARGE OF GARNISHEE. Any person who  
4 has been served with a copy of the writ and notice as provided in sections  
5 8-506-- through 8-508, 11-201, 16-603, 16-604, or 16-1104, Idaho Code, shall  
6 be deemed a garnishee, and service of copy of writ and the notice therein pro-  
7 vided for, shall, for the purpose of sections 8-510-- through 8-523, Idaho  
8 Code, be deemed to be notice of garnishment, and whenever any person shall  
9 have been served with notice of garnishment as herein defined, he may dis-  
10 charge himself by paying or delivering to the ~~officer~~ sheriff or the serving  
11 attorney all debts owing by him to the defendant, or a portion thereof suffi-  
12 cient to discharge the claim of the plaintiff, or any or all money of the de-  
13 fendant in his hands to a similar amount, taking a receipt therefor from the  
14 ~~officer~~ sheriff or the serving attorney, which shall discharge such person  
15 from any and all liability to the extent of such payment, and which shall be  
16 held by the ~~officer~~ sheriff or the serving attorney subject to the orders of  
17 the court out of which the writ issued.

18       SECTION 9. That Section 8-521, Idaho Code, be, and the same is hereby  
19 amended to read as follows:

20       8-521. LIABILITY OF OFFICERS AND EXECUTORS AS GARNISHEES. No sheriff,  
21 constable, serving attorney or other officer charged with the collection of  
22 money shall, prior to the return day of the execution upon which the same may  
23 be made, be liable to be summoned as a garnishee, nor shall any county col-  
24 lector or municipal corporation or any officer thereof, nor administrator or  
25 executor of any estate, prior to the allowance of a demand found to be due by  
26 his estate, or prior to an order of distribution or for the payment of debts  
27 and legacies, be liable in their official capacities as garnishee.

28       SECTION 10. That Section 8-524, Idaho Code, be, and the same is hereby  
29 amended to read as follows:

30       8-524. INVENTORY AND MEMORANDUM OF ATTACHED PROPERTY. The sheriff or  
31 the serving attorney must make a full inventory of the property attached,  
32 and return the same with the writ. To enable him to make such return as to  
33 the debts and credits attached, he must request, at the time of service, the  
34 party owing the debt or having the credit to give him a memorandum, stating  
35 the amount and description of each, and if such memorandum be refused, he  
36 must return the fact of refusal with the writ. The party refusing to give the  
37 memorandum may be required to pay the cost of any proceedings taken for the  
38 purpose of obtaining information respecting the amounts and description of  
39 such debt or credit.

40       SECTION 11. That Section 11-102, Idaho Code, be, and the same is hereby  
41 amended to read as follows:

42       11-102. FORM OF WRIT. The writ of execution must be issued in the name  
43 of the people, sealed with the seal of the court, and subscribed by the clerk,  
44 and be directed to the sheriff or in the case of a bank garnishment, wage gar-

1 nishment or other money garnishment be directed to a serving attorney, and  
 2 it must intelligently refer to the judgment, stating the court, the county  
 3 where the judgment roll is filed, and if it be for money, the amount thereof,  
 4 and the amount actually due thereon, and if made payable in a specified kind  
 5 of money, or currency, the execution must also state the kind of money or cur-  
 6 rency in which the judgment is payable, and must require the sheriff or serv-  
 7 ing attorney substantially as follows:

8 (1) If it be against the property of the judgment debtor, it must re-  
 9 quire the sheriff to satisfy the judgment, with interest, out of the per-  
 10 sonal property of such debtor, and if sufficient personal property cannot  
 11 be found, then out of his real property; or if the judgment be a lien upon  
 12 real property, then out of the real property belonging to him on the day when  
 13 the judgment was docketed, or at any time thereafter; or if the execution be  
 14 issued to a county other than the one in which the judgment was recovered,  
 15 on the day when the transcript of the docket was filed in the office of the  
 16 recorder of such county, stating such day, or any time thereafter.

17 (2) If it be against real or personal property in the hands of the per-  
 18 sonal representatives, heirs, devisees, legatees, tenants, or trustees, it  
 19 must require the sheriff to satisfy the judgment, with interest, out of such  
 20 property.

21 (3) If it be against the person of the judgment debtor, it must require  
 22 the sheriff to arrest such debtor and commit him to the jail of the county un-  
 23 til he pay the judgment, with interest, or be discharged according to law.

24 (4) If it be issued on a judgment made payable in a specified kind of  
 25 money or currency, it must also require the sheriff or serving attorney to  
 26 satisfy the same in the kind of money or currency in which the judgment is  
 27 made payable, and the sheriff or serving attorney must refuse payment in any  
 28 other kind of money or currency; and in case of levy and sale of property of  
 29 the judgment debtor, he must refuse payment from any purchaser at such sale  
 30 in any other kind of money or currency than that specified in the execution.  
 31 The sheriff or serving attorney collecting money or currency in the manner  
 32 required by this chapter, must pay to the plaintiff or party entitled to re-  
 33 cover the same, the same kind of money or currency received by him, and in  
 34 case of neglect or refusal so to do, he shall be liable on his official bond  
 35 to the judgment creditor in three (3) times the amount of the money so col-  
 36 lected.

37 (5) If it be for the delivery of the possession of real or personal prop-  
 38 erty, it must require the sheriff to deliver the possession of the same, de-  
 39 scribing it, to the party entitled thereto, and may at the same time require  
 40 the sheriff to satisfy any costs, damages, rents or profits recovered by the  
 41 same judgment, out of the personal property of the person against whom it was  
 42 rendered, and the value of the property for which the judgment was rendered,  
 43 to be specified therein, if a delivery thereof cannot be had; and if suffi-  
 44 cient personal property cannot be found, then out of the real property, as  
 45 provided in subsection (1) of this section.

46 SECTION 12. That Section 11-103, Idaho Code, be, and the same is hereby  
 47 amended to read as follows:

48 11-103. TIME WHEN RETURNABLE -- RECORD IN EXECUTION BOOK -- CONTINU-  
 49 OUS EXECUTION OR GARNISHMENT FOR CHILD SUPPORT. (a) Except as provided in

1 subsection (b) of this section, the execution may be made returnable at any  
 2 time not less than ten (10) nor more than sixty (60) days after its receipt by  
 3 the sheriff or serving attorney, to the clerk with whom the judgment roll is  
 4 filed. When the execution is returned, the clerk must attach it to the judg-  
 5 ment roll. If any real estate be levied upon, the clerk must record the ex-  
 6 ecution and the return thereto at large, and certify the same under his hand  
 7 as true copies in a book to be called the "execution book," which book must  
 8 be indexed with the names of the plaintiffs and defendants in execution al-  
 9 phabetically arranged, and kept open at all times during office hours for the  
 10 inspection of the public without charge. It is evidence of the contents of  
 11 the originals whenever they, or any part thereof, may be destroyed, muti-  
 12 lated or lost.

13 (b) Where an execution or garnishment against earnings or unemployment  
 14 benefits for a delinquent child support obligation is served upon any person  
 15 or upon the state of Idaho and there is in possession of such person or the  
 16 state of Idaho any such earnings or any unemployment benefits of the judg-  
 17 ment debtor, the execution and the garnishment shall operate continuously  
 18 and shall require such person or the state of Idaho to withhold the nonex-  
 19 empt portion of earnings or unemployment benefits at each succeeding earn-  
 20 ings or unemployment benefits disbursement interval until released by the  
 21 sheriff or serving attorney at the written request of the judgment creditor  
 22 or until the judgment for child support debt, in the dollar amount specif-  
 23 ically set forth on the writ of execution and subject to garnishment as of  
 24 the date the writ of execution is issued, is discharged or satisfied in full;  
 25 provided, however, that interim returns on such continuous execution or gar-  
 26 nishment shall be filed by the sheriff or serving attorney at intervals not  
 27 to exceed fourteen (14) days, whenever the amount collected in the fourteen  
 28 (14) day period is at least equal to fifty dollars (\$50.00), but in any event,  
 29 interim returns on such continuous garnishment shall be filed by the sheriff  
 30 or by the serving attorney at intervals not to exceed thirty (30) days. The  
 31 proportion of earnings subject to garnishment as compared to total avail-  
 32 able earnings or unemployment benefits shall be limited to the percentage  
 33 restrictions on garnishment of wages for child support as provided in sec-  
 34 tion 11-207, Idaho Code.

35 SECTION 13. That Section 11-107, Idaho Code, be, and the same is hereby  
 36 amended to read as follows:

37 11-107. EXECUTIONS DIRECTED TO SHERIFF OR SERVING ATTORNEY -- EXECU-  
 38 TIONS IN DIFFERENT COUNTIES AT SAME TIME. Where the execution is against the  
 39 property of the judgment debtor it may be issued to the sheriff of any county  
 40 in the state or to a serving attorney. Where it requires the delivery of real  
 41 or personal property it must be issued to the sheriff of the county where the  
 42 property, or some part thereof, is situated, except in the case of an execu-  
 43 tion for a bank garnishment, wage garnishment or other money garnishment, in  
 44 which case it may be issued to a serving attorney. Executions may be issued  
 45 at the same time to different counties.

46 SECTION 14. That Section 11-203, Idaho Code, be, and the same is hereby  
 47 amended to read as follows:

11-203. CLAIM OF EXEMPTION BY DEFENDANT OR THIRD PARTY CLAIM -- MOTION TO CONTEST CLAIM AND HEARING -- HOLDING AND RELEASE OF PROPERTY BY SHERIFF OR SERVING ATTORNEY. The following procedures shall apply to a claim by the defendant or the defendant's representative that property levied upon is exempt and to any claim by a third party that property levied upon is his property or that he has a security interest therein. The defendant or the defendant's representative shall complete the claim of exemption form as provided in section 8-507C, Idaho Code. A third party claimant shall prepare a written claim setting forth the grounds upon which he claims the property, and in the case of a secured party, also stating the dollar amount of the claim. A claim of exemption or third party claim may be filed only if property has been levied upon.

(a1) The claim of exemption or third party claim and two (2) postage prepaid envelopes, to serve copies on the judgment creditor and the sheriff or serving attorney, shall be delivered or mailed to the sheriff court in which the judgment was entered within fourteen (14) days after the date the sheriff or serving attorney hand delivers or mails the documents required to be served upon the defendant and third parties under section 8-507A, Idaho Code. If the claim is mailed, it must be received by the sheriff court within the fourteen (14) day period. In computing the fourteen (14) day period, intervening weekends and legal holidays shall be counted, but if the last day of the period falls on a weekend or legal holiday, the period shall be deemed to run until the close of business of the first business day following the weekend or holiday.

Within one (1) business day after receiving a claim, the sheriff court shall deliver or mail a copy thereof to the plaintiff or other person in whose favor the writ of execution runs and to the sheriff or serving attorney. The sheriff court may provide notification of the claim by telephone but must also mail a copy of the claim within one (1) business day as herein provided.

(b2) The plaintiff or other person in whose favor the writ of execution runs shall have five (5) business days after the date a copy of the claim is delivered or mailed to him by the sheriff court within which to file a motion with the court stating the grounds upon which he contests the claim of exemption or third party claim. When the motion is filed, the plaintiff shall lodge with the court a copy of the claim to which the motion pertains. Hearing on the motion shall be set for a date within not less than five (5) nor more than twelve (12) days after the filing date of the motion and may be continued only at the request of the defendant. A copy of the motion and notice of hearing shall be delivered or mailed to the defendant or third party claimant on the date the motion is filed. The prevailing party at the hearing may be awarded costs pursuant to the Idaho rules of civil procedure.

Within the period for filing a motion to contest, the moving party shall notify the sheriff or the serving attorney that the motion has been filed. Such notification may be by telephone but a copy of the motion and notice of hearing shall also be mailed or hand delivered to the sheriff or serving attorney within the filing period herein prescribed.

(c3) The sheriff or the serving attorney shall not deliver to the plaintiff or sell the property levied upon, except if perishable as provided by law, until the period for filing a claim has elapsed. The sheriff or the serving attorney shall refuse to accept or honor a claim not filed with him

1 within that period and unless otherwise ordered by the court, shall, after  
 2 such period has elapsed, proceed to sell or deliver the property levied upon  
 3 to the plaintiff or other person in whose favor the execution runs. If, af-  
 4 ter notice from the sheriff or from the serving attorney of the filing of a  
 5 claim, the plaintiff or other person in whose favor the execution runs, no-  
 6 tifies the sheriff or the serving attorney that the claim will be uncontested  
 7 or fails to notify the sheriff or the serving attorney within the time pro-  
 8 vided in subsection (~~b~~2) of this section that the claim is being contested,  
 9 the sheriff or the serving attorney shall release the claimed property to the  
 10 defendant or his agent.

11 (~~d~~4) If a plaintiff or other person in whose favor the execution runs  
 12 has failed to contest a claim of exemption within the time allowed by this  
 13 section or if property has been determined by a court to be exempt, and  
 14 the plaintiff or other person in whose favor the execution runs thereafter  
 15 levies upon or otherwise seeks to apply the property toward the satisfaction  
 16 of the same money judgment, the plaintiff or other person in whose favor the  
 17 execution runs is not entitled to recover the subsequent costs of collection  
 18 unless the property is applied to satisfaction of the judgment.

19 (~~e~~5) If a security agreement to the third party claimant is in default,  
 20 rendering said claimant the legal right to possession, the claimant may file  
 21 with the sheriff or with the serving attorney an affidavit of release to the  
 22 claimant executed by the defendant-debtor, or his agent; or, in lieu of said  
 23 affidavit of release, the third party claimant may file an affidavit setting  
 24 forth the defendant-debtor's default and claiming possession under default  
 25 and a hold harmless agreement in favor of the sheriff or serving attorney,  
 26 supported by an undertaking qualifying in the state of Idaho, indemnifying  
 27 the sheriff or the serving attorney and said defendant-debtor in double the  
 28 actual value of the property as stated in said third party claim. Upon re-  
 29 ceipt of either of the foregoing, the sheriff or the serving attorney shall  
 30 release said property to the third party claimant, taking receipt therefor;  
 31 these proceedings to be reported to the court by the sheriff's or serving at-  
 32 torney's return in the action.

33 (~~f~~6) Nothing in this section shall be construed to prevent the defen-  
 34 dant from pursuing his common law remedies.

35 (~~g~~7) Personal service shall be accomplished in the same manner provided  
 36 for service of summons under the Idaho rules of civil procedure. Mailing  
 37 shall be by first class mail. The date when an item is deposited in the United  
 38 States mails shall constitute the date of mailing. In computing any period  
 39 of time prescribed in this section, the day of the act or event after which  
 40 the designated period of time begins to run is not to be included.

41 SECTION 15. That Section 11-206, Idaho Code, be, and the same is hereby  
 42 amended to read as follows:

43 11-206. DEFINITIONS. For the purpose of section 11-207, Idaho Code,  
 44 the term:

45 (~~1-~~) "Earnings" means compensation paid or payable for personal  
 46 services, whether denominated as wages, salary, commission, bonus, or oth-  
 47 erwise, and includes periodic payments pursuant to a pension or retirement  
 48 program.

1       ~~(2-)~~ "Disposable earnings" means that part of the earnings of any indi-  
 2       vidual remaining after the deduction from those earnings of any amounts re-  
 3       quired by law to be withheld.

4       ~~(3-)~~ "Garnishment" means any legal or equitable procedure through  
 5       which the earnings of any individual are required to be withheld for payment  
 6       of any debt.

7       (4) "Serving attorney" means an attorney who is an active member of the  
 8       Idaho state bar and his or her duly authorized employee or agent over whom the  
 9       attorney has direct supervision.

10       SECTION 16. That Section 11-301, Idaho Code, be, and the same is hereby  
 11       amended to read as follows:

12       11-301. EXECUTION OF WRIT. (1) The sheriff, or the serving attorney in  
 13       the case of a bank garnishment, wage garnishment or other money garnishment,  
 14       must execute the writ against the property of the judgment debtor by levy-  
 15       ing on a sufficient amount of property if there be sufficient; collecting  
 16       or selling the things in action, and selling the other property, and pay-  
 17       ing to the plaintiff or his attorney so much of the proceeds as will sat-  
 18       isfy the judgment. Any excess in the proceeds over the judgment and accruing  
 19       costs must be returned to the judgment debtor unless otherwise directed by  
 20       the judgment or order of the court. When there is more property of the judg-  
 21       ment debtor than is sufficient to satisfy the judgment and accruing costs  
 22       within the view of the sheriff or of the serving attorney, he must levy only  
 23       on such part of the property as the judgment debtor may indicate, if the prop-  
 24       erty indicated be amply sufficient to satisfy the judgment and costs.

25       (2) The provisions of sections 8-507 through 8-507D, Idaho Code, shall  
 26       apply to a levy upon personal property.

27       SECTION 17. That Chapter 32, Title 31, Idaho Code, be, and the same is  
 28       hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 29       ignated as Section 31-3203A, Idaho Code, and to read as follows:

30       31-3203A. SERVING ATTORNEY GARNISHMENT FEES. A serving attorney, as  
 31       defined in section 8-507, Idaho Code, may charge a reasonable fee for ser-  
 32       vices. In addition, a serving attorney may charge a commission for receiving  
 33       and paying over money on execution equal to one and one-half percent (1 1/2%)  
 34       on the first one thousand dollars (\$1,000), and one-half percent (1/2%) on  
 35       all sums over such amount, but not to exceed seventy-five dollars (\$75.00)  
 36       in any case. Such fees for the levy of an execution and percentage for mak-  
 37       ing or collecting the money on execution shall be collected from the judgment  
 38       debtor as an additional amount added to the writ of execution.